

Appeal from a decision of the Oregon State Office, Bureau of Land Management, canceling lease OR 26403 (Wash.).

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Generally

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. This regulation is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976).

2. Contracts: Generally -- Oil and Gas Leases: Cancellation

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a regulation provides that no oil and gas lease offers will be accepted on lands withdrawn for the protection of wildlife, and the authorized officer fails to follow the regulation, such signing is not authorized and, therefore, not binding on the Secretary.

APPEARANCES: D. M. Yates, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

D. M. Yates appeals from a decision dated October 26, 1982, issued by the Oregon State Office, Bureau of Land Management (BLM), canceling lease OR 26403 (Wash.). <sup>1/</sup> That decision provided:

Your oil and gas lease OR 26403 (Wash) was signed June 18, 1982, on behalf of the United States with an effective date of July 1, 1982. Your lease is hereby cancelled and rejected for the following reason.

The lands within the lease lie within the boundaries of Columbia National Wildlife Refuge System. Wildlife Refuge lands are exempt from oil and gas leasing under 43 CFR 3101.3-3(a), except when these lands are subject to drainage and in those instances leases will be offered only under competitive bidding.

The Supreme Court recognizes that under the Secretary's general power of management of public lands, he has authority to rescind a lease which was erroneously issued. Boesche vs Udall, 373 US 472 (1963).

The BLM decision further advised appellant that a refund of the advance rental payment for the lease would be processed.

Appellant contends that (1) the action taken is without cause as the lands leased are not withdrawn as described in 43 CFR 3101.3-3, and (2) Boesche v. Udall, 373 U.S. 472 (1963), does not provide authority for this action.

[1] The regulation cited by BLM, 43 CFR 3101.3-3(a)(1), provides, in relevant part, that "[n]o offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1 [lands subject to drainage]." "Wildlife refuge lands" are defined as follows:

Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing. [Emphasis added.]

43 CFR 3101.3-3(a). This regulation has been interpreted to mean that oil and gas leasing is precluded where lands are embraced in a withdrawal for the protection of all species of wildlife within a particular area. Nugget Oil Corp., 61 IBLA 43 (1981); Esdras K. Hartley, 57 IBLA 319 (1981).

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<sup>1/</sup> The lands were described in the offer as follows: T. 16 N., R. 28 E., Willamette meridian, sec. 18: lot 4, SE 1/4 SW 1/4, S 1/2 SE 1/4.

Public Land Order (PLO) No. 243 (9 FR 11400 (Sept. 6, 1944)), which establishes the Columbia National Wildlife Refuge, 2/ withdraws and reserves certain lands including those lands described in appellant's canceled lease offer OR 26403 (Wash.).

Appellant contends, however, that this withdrawal is not encompassed by 43 CFR 3101.3-3, because it appears to have been only for the management of wildlife and not for protection per se. Furthermore, she contends that the withdrawal did not state that it was "for all species" of wildlife for their "protection."

We disagree. PLO 243, supra, states that "the following-described public lands in Washington are hereby withdrawn \* \* \* and reserved and set apart for the use of the Department of the Interior as a refuge and breeding ground for migratory birds and other wildlife, the reservation to be known as the Columbia National Wildlife Refuge." (Emphasis added.) The function of a refuge is shelter and protection. It is typically defined as a safe retreat. The withdrawal language providing protection for "migratory birds and other wildlife" is not limiting or restrictive and thus applies to all species of wildlife. D. M. Yates, 73 IBLA 353 (1983). Appellant's arguments are without merit.

Even though the lands at issue were not withdrawn from oil and gas leasing under PLO 243, supra, since the Secretary's withdrawal authority is distinct from his discretionary authority under section 17 of the Mineral Leasing Act (MLA), as amended, 30 U.S.C. § 226 (1976), the Secretary could still exercise that discretionary authority not to accept offers for those lands. See, e.g., John R. Anderson, 50 IBLA 38 (1980); T. R. Young, Jr., 20 IBLA 333 (1975). The general prohibition against oil and gas leasing in 43 CFR 3101.3-3(a) is a formal exercise of the Secretary's discretion under section 17 of MLA, supra, and 43 CFR 3101.3-3(a) is applicable in the present case to PLO 243, supra. See Nugget Oil Corp., supra.

[2] It is a long established rule that the Secretary is not bound by the unauthorized acts of his agents. E.g., Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Calazona Fertilizer Co., 66 I.D. 4, 10 (1959). Here, appellant's oil and gas lease offer OR 26403 (Wash.) was signed by the authorized officer of BLM on June 18, 1982, with an effective date of July 1, 1982. Appellant contends that Boesche v. Udall, supra, cited by BLM as authority for the cancellation of his lease on October 26, 1982, does not in fact authorize such a postlease cancellation. Boesche v. Udall, supra, however, observes that whereas section 31 of MLA reaches only cancellations based on postlease events, it leaves unaffected the Secretary's traditional administrative authority to cancel on the basis of the prelease factors. In fact, Boesche clearly states that the Secretary should have the power to correct his own errors. Boesche v. Udall, supra at 478. Appellant submitted offer OR 26403 (Wash.) for lands which were not available for leasing under 43 CFR 3101.3-3. The BLM authorized officer is bound by this regulation and was

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2/ The refuge was enlarged by PLO 1766 (23 FR 9780 (Dec. 12, 1958)); modified by PLO 3062 (28 FR 4561 (May 1, 1963)); and added to by PLO 4954 (35 FR 18381 (Nov. 27, 1970)).

without authority to issue a lease on land embraced by this regulation. Such an unauthorized lease issuance is not binding on the Secretary. See Nola Grace Ptasynski, 28 IBLA 256 (1976). <sup>3/</sup> Since lease OR 26403 (Wash.) was invalidly issued, we find that BLM properly canceled appellant's oil and gas lease. See Oil Resources, Inc., 14 IBLA 333 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

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<sup>3/</sup> The authority of the Secretary to cancel leases erroneously issued in violation of the MLA and regulations promulgated thereunder is properly distinguished from the situation where, after lease issuance, an environmental assessment was performed which would support an exercise of discretion to reject a lease offer. Such a finding after lease issuance will not support lease cancellation. See Carl J. Taffera, 71 IBLA 72 (1983).

